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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1303 87

A. R. TUCKER,

Appellant,

vs.

THE STATE OF TEXAS

APPEAL FROM THE COUNTY COURT OF MEDINA COUNTY, TEXAS

STATEMENT AS TO JURISDICTION

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COUNTY COURT OF MEDINA COUNTY

A. R. TUCKER,

Appellant,

vs.

THE STATE OF TEXAS,

Appellee

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

JURISDICTIONAL STATEMENT

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files his statement disclosing the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this Court.

Legislation Drawn in Question

The legislation, the constitutionality and validity of which is here drawn in question is Article 479, Chapter 3 of the Texas Penal Code, which provides:

> "Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars."

Also drawn in question is Section 1548 of Title 42 of the United States Code, which empowers the Administrator of the Federal Public Housing Authority to "establish reasonable standards of safety and health" in Defense Housing Projects. Pursuant to authority vested by this provision of the laws of the United States, a rule was promulgated by the Federal officials for the Hondo Navigation Village, prohibiting peddlers, solicitors and hawkers from plying their trade within the limits of said Village without the permission of the manager of the Village.

How Legislation Construed by Court Below

Article 479, Chapter 3, of the Texas Penal Code was construed so as to furnish criminal sanctions for violation of the rule of the Hondo Navigation Village prohibiting peddling, soliciting, and hawking within the limits of said Village without the prior permission of the housing manager. *The code provision was not restricted so as to give protection to individual housesholders troubled by peddlers, hawkers and solicitors who refused to leave when ordered so to do, but was broadly construed so as to enable the manager of the Village to absolutely prohibit appellant from calling at any of the homes within said Village, without his*

prior permission. Thus, for all intents and purposes, the Code provision has been construed so as to constitute a peddler's permit law of the type repeatedly struck down by this Court.[1]

The County Court of Medina County, Texas, the highest court of Texas in which a decision can be obtained in this cause, held that the statute was valid and constitutional and that it did not abridge appellant's rights of free speech, free press and his freedom to worship and serve ALMIGHTY GOD according to His written commands contained in the Bible and according to appellant's conscience. Said County Court also held that said statute was not unconstitutional because unreasonable and in excess of the police powers of the State and hence contrary to the Fourteenth Amendment. The court also refused to hold that the statute conferred authority at once arbitrary and discriminatory, upon the manager of the Village, contrary to the Fourteenth Amendment to the Federal Constitution. That court of last resort of the State of Texas sustained the application of the statute to appellant and decided in favor of the validity of same under the Federal Constitution and held that it was constitutional on its face and as construed and applied.

County Court of Medina County Is Court of Last Resort

Appellant was fined only One ($1) Dollar and costs by the County Court on appeal from a judgment of a Justice of the Peace. Article 53 of the Code of Criminal Procedure for Texas, 1925, provides that the Court of Criminal Appeals of Texas does not have jurisdiction of an appeal from a judgment rendered by the County Court on trial *de novo* on appeal from a Corporation or Justice Court where the fine assessed in the County Court does not exceed the sum

[1] *Largent* v. *Texas*, 318 U. S. 418 (1943); *Schneider* v. *New Jersey*, 308 U. S. 147 (1939); *Lovell* v. *Griffin*, 303 U. S. 444 (1938).

of $100.00 and costs. Other articles of the Code of Criminal Procedure confer exclusive appellate jurisdiction of misdemeanor offenses tried in the County Court where the fine does not exceed $100.00 and costs on trial *de novo* in the County Court. *Ex parte Largent*, 162 S. W. 2d 419. The County Court of Medina County is the court of last resort and the highest court in the State of Texas in which a decision could be had in this cause, although said County Court is not the highest criminal court of appeals in the State. This Court has so held in other cases. *Largent* v. *Texas*, 318 U. S. 418; *Thomas* v. *Rabb*, 267 U. S. 564; *Bacon* v. *Texas*, 163 U. S. 207; *Sullivan* v. *Texas*, 207 U. S. 416, and *S. A. & A. P. R. Co.* v. *Wagner*, 241 U. S. 476.

Timeliness

The judgment of the Medina County Court assessing a fine of One ($1) Dollar and costs was rendered and entered on the 29th day of January 1945 [4].. Thereafter, within the time allowed by law, a motion for new trial was filed by appellant and said motion was overruled on the 5th day of March 1945 [12]. The judgment of the County Court thereupon became final. This petition for appeal is duly presented and filed within three months from the date such judgment became final and is therefore timely.

Opinion

No opinion was filed by the Medina County Court in this cause.

Statement of the Case

Facts

Appellant is an ordained minister of the gospel, and as such is one of Jehovah's witnesses [38-51]. The Watchtower Bible and Tract Society, under direction of which he carried

forward his ministerial activities, assigned him to serve the church at Hondo, Texas, in the latter part of 1943. He carried with him proper credentials showing that he had been trained as a minister and that he was a representative of said Society [53-A]. He testified that Jehovah's witnesses were the true servants of the Most High God, many of whom are named in the eleventh chapter of Hebrews in the Holy Bible [40]. The purpose of this Christian group, he said, was to bring the people the message of and concerning Christ's Kingdom as the appointed government of Almighty God, and to do this by calling on the people from door to door and there presenting to them printed literature fully explaining how they may obtain everlasting life under that permanent righteous government for obedient creatures [40]. As his authority for doing this work he quoted the passage at Isaiah 61:1-3, which reads as follows:

> "The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn; to appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the garment of praise for the spirit of heaviness; that they might be called trees of righteousness, the planting of the Lord, that he might be glorified" [40-41].

In addition to distributing Biblical literature to the people from door to door, he said that he also arranged to conduct systematic Bible studies with those who desired to have same arranged in their homes.

A part of the town of Hondo, Texas, is known as the Hondo Navigation Village. This village was constructed by the Federal Public Housing Authority, an agency of the

United States Government [23, 24]. Erected as a part of the Defense Housing Program, this village provided house trailer and bungalow accommodations for several hundred families. A. B. Purinton, the complaining witness, testified that he was the duly appointed manager of this village [20]. He said that although he did not personally own the village, it was government property and that he was the agent of the government in charge of same [25]. He testified that the Federal Public Housing Authority had prescribed certain rules for the management of such projects, and that it was his duty to see that those rules were enforced [20]. Among others, there was a rule that required all peddlers, solicitors and hawkers to apply for and obtain a permit from the village manager before they were allowed to carry on their trade in the village. The rule itself was not specific as to what kind of peddlers, hawkers or solicitors were within the rule, and Mr. Purinton said that he included Jehovah's witnesses within that category [20-21]. Furthermore, Mr. Purinton, pointed out, the rule applied to all ministers of all denominations, and that no one could come into the village and preach unless he had secured a permit so to do [33]. It appeared that there was no particular criterion for judging who would be entitled to a permit, but that the issuance of permits was within the discretion of the village manager [30, 33].

Shortly after his arrival in Hondo, appellant in the course of calling from door to door on all the homes in the community, entered the Hondo Navigation Village and began calling on the people there. He would rap on the door and when someone responded, he would tell them that he was a minister of the gospel. He would then proceed to explain briefly to them why it was that Jehovah's witnesses were going from door to door warning the people of the approaching doom of all wickedness and evil in the earth. Literature

explaining the matter more in detail, and giving the Biblical evidence in support thereof was always provided for examination. If the person desired to have the literature, opportunity was given to contribute toward the benevolent work being done and to assist in printing more like literature. Sometimes, if the people did not have any money to contribute, but expressed a desire to have the literature, it was left without receiving any contribution on the condition that it be read.

While appellant was thus engaged in calling on the people from door to door, Mr. Purinton learned of his activities in the Village and sent one of his employees to ask appellant to come to his office [29]. Appellant thereupon went to Mr. Purinton's office and being called upon to explain his activities, he pointed out that he was a minister of the gospel, showed him the literature he was distributing, explained that he was doing a work for the good of the people in that he was directing their attention to the Bible, showing them how to study it systematically and assisting them to understand "the Scriptures concerning the establishment of God's kingdom, the wonderful provisions that God has made for the people of goodwill concerning that Kingdom" [42, 43] He made it very plain that he was a minister and not a peddler [43]. However, Mr. Purinton advised him that he could not call from door to door within the Village regardless of the ministerial character of his work because he felt that it would disturb the people in the Village [30, 31]. He then ordered appellant to leave and not persist in this activity [44]. Appellant left [44].

Several days later, while driving through the Village, he happened to see appellant again calling from door to door with his literature. He stopped and again warned appellant that such practice was not permitted and that he would have to quit [31].

On October 5, 1944 appellant again entered the Village and was calling from door to door. In the course of his visits he happened to call at the home of Mr. Purinton, not knowing that he resided there. Mr. Purinton testified that appellant "seemed surprised that he came to my house, and he said, 'I believe I talked to you in your office.' I stated, 'Yes, you know you did and I informed you at that time you couldn't solicit out here,' and he started talking to me and I asked him if he had any literature or anything to sell, I said, 'What do you have here to sell,' and he said he had a pamphlet to sell, that it was a nickel, and I bought it" [32]. He said that he did not get the book to read, but for evidence [32]. He then ordered appellant to leave his home and the Village [44]. Appellant promptly left Mr. Purinton's home and also the Village [44].

Appellant said that none of the people residing in the Village had told him to leave their homes or the Village, with the exception of Mr. Purinton [43]. Although some of the people had not manifested interest in the work he was doing, many persons gladly received the literature, contributed to the work being done and invited appellant to come back [43-44].

The literature was being distributed by appellant as a substitute for oral sermons, and to provide means whereby the people could study the Bible in the quiet of their home [47]. He pointed out that Jehovah's witnesses had no churches where Sunday sermons were preached, but that they considered it their duty to go from house to house and speak directly to the people concerning the Bible, which was the manner of gospel preaching commanded in the Scriptures [45]. He further explained that he did not leave the Village when ordered so to do by the manager for the reason that Jehovah God had commanded that the gospel message be preached to every creature and that it was

thus up to the creature in each instance to decide whether he would accept or reject it, and that the manager had neither the legal nor Scriptural right to make this decision for the people [45, 46]. He said that he worshiped God by telling others of Jehovah's gracious provision for mankind and that he could not obey man's command to stop worshiping, for to do so would mean his everlasting destruction [46].

The complaint sworn to by Mr. Purinton charged that appellant entered "upon premises owned by A. B. Purinton * * * and did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same." Mr. Purinton admitted that he was not the owner of the Village, but that it was government property, and that he was agent for the government and in full control of same as well as the "lives of all the people" there [25]. He also testified that he was not complaining that appellant had refused to leave his home when ordered so to do, because appellant had promptly left his house when he told him to leave [34]. His complaint was that appellant persisted in coming into the Village and calling from door to door, having been ordered not to do so [34].

Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States and Showing Federal Questions Involved on Appeal.

One

The statute and regulation insofar as they have been construed and applied by the court below to allow the Village manager arbitrarily to prohibit appellant from distributing Bible literature among the people residing in said Village, constitute an unreasonable abridgment of appellant's rights

of freedom of speech, press, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

A

The use to which the property in question has been dedicated by the Federal Public Housing Authority and used by the people creates a relationship between the Village management and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal corporations likewise apply to the Village management acting as a *de facto* municipal corporation.

Davis v. *Massachusetts*, 167 U. S. 43 (1897);
Hague v. *C. I. O.*, 307 U. S. 496 (1938);
Jamison v. *Texas*, 318 U. S. 413 (1943);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
Valentine v. *Chrestensen*, 316 U. S. 52, 55 (1941).

B

The statutes and regulations are unconstitutional as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the demand of the Village management that Jehovah's witnesses obtain a permit from the housing manager of the village before preaching the gospel by means of distributing printed Bible sermons to persons residing in the Village.

Blue Island v. *Kozul*, 379 Ill. 511, 41 N. E. 2d 868 (1942);
Borchert v. *Ranger*, 42 F. Supp. 577 (1941);
Cantwell v. *Connecticut*, 310 U. S. 296 (1940);
Enoch v. *Guymon*, 75 Okla. Cr. 1, 127 P. 2d 855 (1942);
Florida ex rel. Hough v. *Woodruff*, 147 Fla. 299, 2 S. (2d) 577 (1941);

Florida ex rel. Wilson v. *Russell*, 146 Fla. 539, 1 S. (2d) 569 (1941);
Largent v. *Texas*, 318 U. S. 418 (1943);
Lovell v. *Griffin*, 303 U. S. 444 (1938);
Near v. *Minnesota*, 283 U. S. 697, 713-716 (1931);
Schneider v. *New Jersey*, 308 U. S. 147 (1939);
Tucker v. *Randall*, 18 N. J. Misc. 675, 15 A. (2d) 324 (1940).

C

The statutes and regulations are unconstitutional insofar as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Village management on the activity of Jehovah's witnesses in preaching the gospel by means of distributing printed Bible sermons to the people residing in the Village.

Carlson v. *California*, 310 U. S. 106 (1940);
Jamison v. *Texas*, 318 U. S. 413 (1943);
Jones v. *Opelika*, 316 U. S. 584 (1942), reversed at 319 U. S. 103;
Near v. *Minnesota*, 283 U. S. 697 (1931);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
Walrod, Ex parte, 73 Okla. Cr. 299, 120 P. (2d) 783 (1941);
Winnett, Ex parte, 73 Okla. Cr. 332, 121 P. (2d) 312 (1942);
Zimmermann v. *London*, 38 F. Supp. 582 (1941).

Two

As it has been construed and applied by the Court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statute, as well as the regulation, is presumptively unconstitutional, and which presumption the State has failed

to overcome by a showing that both of those enactments are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

Bridges v. *California*, 314 U. S. 252, 262, 273 (1941);
Busey v. *Dist. of Columbia*, 138 F. (2d) 592, 78 App. D. C. 189 (1943);
De Jonge v. *Oregon*, 299 U. S. 353 (1937);
Schneider v. *New Jersey*, 308 U. S. 147 (1939);
Thomas v. *Collins*— U. S. —, 65 S. Ct. 315, 322 (1945);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
West Virginia State B'd of Educ'n v. *Barnette*, 319 U. S. 624, 638 (1943);
United States v. *Carolene Prod. Co.*, 304 U. S. 144, 152 (1938);
Jackson, Robert H., *The Struggle for Judicial Supremacy* (New York, Knopf, 1941), p. 285.

THREE

The statutes and regulations are unconstitutional on their face and as construed and applied by the court below in that they are not narrowly drawn laws, defining and punishing specific conduct, but are vague, indefinite, uncertain, too general, and both fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a dragnet, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

Connally v. *General Constr. Co.*, 269 U. S. 385, 391, 392 (1925);
De Jonge v. *Oregon*, 299 U. S. 353 (1937);
Herndon v. *Lowry*, 301 U. S. 242 (1936);
Lanzetta v. *New Jersey*, 306 U. S. 451 (1939);
Massachusetts v. *Reilly*, 248 Mass. 1, 4 (1924);

New Jersey v. *Klapprott*, 127 N. J. L. 359, 22 A. 2d 877 (1941);
Small Co. v. *American Sugar Ref'g Co.*, 267 U. S. 233 (1925);
Smith v. *Cahoon*, 283 U. S. 553, 564 (1930);
Stromberg v. *California*, 283 U. S. 359 (1931);
Thornhill v. *Alabama*, 310 U. S. 88, 100 (1938);
Tozer v. *United States*, 52 Fed. 917, 919 (1892);
United States v. *Capital Traction Co.*, 34 App. D. C. 592 (1910);
United States v. *Cohen Grocery Co.*, 255 U. S. 81 (1920);
Weeds, Inc. v. *United States*, 255 U. S. 109 (1920).

Discussion

Save for two slight differences, the issues involved in this appeal are identical with those presented in the companion case of *Grace Marsh* v. *State of Alabama*, docketed June 6th, 1945 as No. 1352, October Term, 1944. The first difference is that in the one instance the owner of the property is the Federal Government and in the other it is a private corporation. But this is not a material difference.

The other variation is that in the instant case the objection of the Village management was directed against the practice of calls being made from door to door by Jehovah's witnesses, while in the *Marsh* case the management objected to the distribution of magazines to people passing up and down the sidewalk in its community shopping center. It will be sufficient to mention in this connection that the construction of the statute by the court below brings this case directly within the ruling of this court in *Martin* v. *Struthers*, 319 U. S. 141 (1943), wherein it was held that a municipal regulation prohibiting door-to-door visitation for the purpose of distributing printed matter was declared unconstitutional. The combined operation of the statute

and regulation in the instant case accomplishes the same result as the Struthers ordinance insofar as the people residing in the Hondo Navigation Village are concerned. For the reasons expressed in this court's opinion in the *Struthers* case, the Texas statute must fall.

In all other respects, the issues in *Grace Marsh* v. *State of Alabama* are identical with those in the instant case, and hence the discussion in the Jurisdictional Statement filed in the *Marsh* case is hereby incorporated by reference. Likewise, each and every assignment of error contained in the Petition for Appeal filed in this cause is here incorporated by reference to show that substantial federal questions are raised.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the court, because the court below disposed of important and substantial federal questions in a way that is in conflict with applicable decisions of this court, and has so radically and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to call for this court's power of supervision and review to halt the same.

Respectfully submitted,

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